

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 445 of 2000

to

FIRST APPEAL No 462 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

RAYJIBHAI BABARBHAI

Appearance:

MS NANDINI JOSHI, AGP for the appellants

MR GM AMIN for Respondents-claimants

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 11/09/2000

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

Admitted. Mr. G.M.Amin, learned counsel waives service of notice on behalf of the claimants in each appeal. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the appeals are taken-up for final hearing today.

All these appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated September 24, 1999, rendered by the learned 4th Joint Civil Judge (S.D.) and J.M.F.C. Godhra, in Land Acquisition References No. 167/90 to 184/90. It may be stated that the Land Acquisition Officer had made common award on October 16, 1989. Moreover, all the Land Acquisition References were consolidated by an order dated August 21, 1999 and common evidence was led by the parties in Land Acquisition Reference No. 167/90. As common questions of fact and law arise for our determination in this group of appeals, we propose to dispose them of by this common judgment.

2. The Executive Engineer, Narmada Main Canal, Unit No.II had proposed to the State Government to acquire agricultural lands of village Katol, Taluka : Kalol, District : Panchmahals for the public purpose of Narmada Main Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Katol were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in the Official Gazette on September 18, 1986. Thereafter those whose lands were sought to be acquired, were served with notices under section 4(1) of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, Unit-II, Vadodara had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Katol, which were specified in the notification published under section 4(1) of the Act, were needed for the public

purpose of Narmada Main Canal. Therefore, declaration under section 6 of the Act was made which was published in the Official Gazette on September 21, 1986. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 30/- per sq.mt. but, having regard to the materials placed before him the Special Land Acquisition Officer by his award dated October 16, 1989 offered compensation to the claimants at the rate of Rs. 1.80 ps. per sq.mt. for non-irrigated lands and Rs. 2.70 ps. per sq.mt for irrigated lands. The claimants were of the opinion that the compensation offered by the Special Land Acquisition Officer was inadequate and, therefore, they accepted the amount of compensation under protest. They filed applications under section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Panchmahals at Godhra, which were registered as Land Acquisition References No. 167/90 to 184/90.

3. In the reference applications it was pleaded by the claimants that the acquired lands were highly fertile and as they were taking three crops in a year, they should be awarded compensation at the rate of Rs.30/per sq.mt. The reference applications were contested by the appellants vide written statement Exh.8, wherein it was, inter-alia, pleaded that just compensation was determined by the Special Land Acquisition Officer and, therefore, references should be dismissed by the Court.

4. Upon rival assertions of the parties, necessary issues for determination were raised by the reference court. On behalf of the claimants, witness Prabhatsinh Raysinh Parmar, who was one of the claimants in Land Acquisition Reference No.170/90, was examined at Exh.16. The witness deposed before the Court that village Katol, where their lands acquired were situated, was at a distance of 3 KMs. from Kalol Town and at a distance of 1/2 KM. from Kalol - Vadodara Road. The witness claimed that all primary facilities were available in village Katol. The witness asserted before the Court that the lands acquired were highly fertile and irrigated. According to the witness, all the claimants were using fertilizers, pesticides, hybrid seeds etc. and, therefore, were able to take three crops in a year. The witness further informed the Court that the claimants were taking crops of millet, maize, wheat, tuver, rice,

groundnut, cotton etc. and were earning substantial income from the sale of those agricultural produces. The witness produced extracts of Village Form No.7/12 at Exhs.17 to 33 to substantiate his claim that the lands acquired were irrigated lands and that the claimants were growing different crops as enumerated by him in his examination-in-chief. Further the witness produced award of the Court dated May 17, 1999 rendered by the learned Civil Judge (S.D.) and J.M.F.C. Godhra, in Land Acquisition References No.613/90 to 622/90 at Exh.35 relating to the lands acquired earlier from this very village and claimed that as the lands which were acquired previously, were similar in all respects, the claimants should be awarded compensation on the basis of the said award. In cross-examination, the witness denied the suggestion made on behalf of the appellants that he had not seen the lands which were acquired earlier. However, it is relevant to notice that his assertion that the lands acquired previously were similar in all respects to the lands acquired in the instant case was never controverted by the appellants. It is also relevant to notice that no witness was examined by the appellants to substantiate the claim advanced in the written statement.

5. On appreciation of evidence led by the parties, the reference court held that the compensation awarded by the Land Acquisition Officer was not fair and adequate. The reference court further deduced that the previous award of the reference court rendered in Land Acquisition References No.613/90 to 622/90 was relevant for the purpose of assessing the market value of the lands acquired in the instant case. In the ultimate analysis, placing reliance on the previous award, the reference court by the impugned award has held that the claimants are entitled to Rs.12/- per sq.mt. as additional amount of compensation, which has given rise to present appeals.

6. Ms. Nandini Joshi, learned A.G.P. submitted that no cogent and reliable evidence was led by the claimants to establish that the lands which were subject matter of previous award, were similar in all respects to the lands acquired in the instant case and, therefore, the previous award could not have been made basis for awarding compensation to the claimants in the present case. According to the learned counsel, the conclusion reached by the reference court that the claimants are entitled to additional compensation at the rate of Rs.12/- per sq.mt. is not well-founded and, therefore, the appeals should be accepted.

7. Mr. G.M.Amin, learned counsel for the claimants

pleaded that the claimants through the evidence of Prabhatsinh Raysinh Parmar have established that the lands acquired previously from this very village were similar to the lands acquired in the instant case and, therefore, reliance placed by the reference court on the previous award cannot be said to be erroneous at all. What was emphasised by the learned counsel for the claimants was that a just award has been made by the reference court determining the amount of compensation payable to the claimants and, therefore, the appeals being without substance, should be dismissed.

8. We have heard the learned counsel for the parties and taken into consideration the record and proceedings of the case received by this court pursuant to order dated August 28, 2000. The substance of deposition of witness Prabhatsinh R.Parmar which is extracted earlier, establishes that the lands which were previously acquired from this very village were similar in all respects to the lands acquired in the instant case. The Extracts of Village Form No.7/12 produced by the claimants at Exhs.17 to 33 would show that the lands acquired in the present case were irrigated lands and the claimants were growing different crops thereon. The assertion made by witness Prabhasinh Parmar in his deposition that the lands acquired previously were similar to their lands was never sought to be controverted by the appellants during cross-examination of the said witness. The appellants had not led either oral or documentary evidence to point out to the Court that previous award was not relevant and reliance placed by the claimants on the said award was misplaced. In the category of sales fall the awards by Courts in previous case of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in vicinity in prev

ious land acquisition proceedings can be treated as affording a guide for determination of compensation to be awarded for lands acquired subsequently. In assessing the market value of a piece of land, the price paid in other transactions relating to land in the neighbourhood must be of some value. It is well settled that the previous award of the court in respect of the similar lands and which has become final can be made basis for assessing market value of the lands acquired subsequently either from the same village or from another adjacent area. Exh.35 which is previous award of the reference court in Land Acquisition References No.613/90 to 622/90 would indicate that agricultural lands of village Katol were acquired for the public purpose of Narmada Main

Canal pursuant to publication of notification issued under section 4(1) of the Act in the Official Gazette on August 28, 1986. With reference to those lands, Land Acquisition Officer by his award dated January 22, 1990 had offered compensation to the claimants at the rate of Rs.2/- per sq.mt. for non-irrigated lands and Rs. 3/- per sq.mt. for irrigated lands, though the claimants had demanded compensation at the rate of Rs. 30/- per sq.mt. The reference Court had relied on another previous award of the Court relating to the lands of this very village and awarded additional compensation of Rs.12/- per sq.mt. to the claimants by judgment and award dated May 7, 1999. In the present case, the date of publication of notification under section 4(1) of the Act is September 18, 1986; whereas the date of publication of notification under section 4(1) of the Act in the previous award was August 28, 1986. Thus, there is no manner of doubt that the notifications under section 4(1) of the Act are proximate in point of time. It may be stated that the previous award of the reference court in Land Acquisition References No.613/90 to 622/90 was confirmed by the High Court in First Appeals No.1369/2000 to 1378/2000 decided on August 9, 2000 by Division Bench comprising M.H.Kadri & D.P.Buch, JJ. Thus, the previous award has become final between the parties. Having regard to the circumstances appearing in the case, we are of the opinion that the reference court was justified in placing reliance on the previous award for assessing market value of the lands acquired in the instant case. In our view, no ground is made out by the appellants to interfere with the impugned award, which is just and reasonable. Therefore, the appeals are liable to be dismissed.

For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(J.M.Panchal,J.)

(M.C.Patel, J.)

(patel)